termand, could not be terminated by the act of the defendants alone. The countermand, however, operated as a breach of the contract—an "anticipatory breach," not a rescission of it—and plaintiff had an immediate right of action. The action, however, should be to recover damages for the breach of the contract and not to recover the price as for goods sold and delivered. The measure of damages would be, not the price agreed upon, but the difference between the contract price and the market value at the time and place of delivery. When defendants repudiated the contract, plaintiff not only had the right to act upon the theory of a present breach, but was under obligation not to unnecessarily enhance the damages by proceeding after the countermand to finish its undertaking. *Unexcelled Fire Works Co.* v. *Polites*, 130 Pa. 536, 18 Atl. 1058, 17 Am. St. Rep. 788, was chiefly relied upon, but *Davis* v. *Bronson*, 2 N. D. 300, 50 N. W. 836, 16 L. R. A. 655, 53 Am. St. Rep. 783; *Gibbons* v. *Bente*, 51 Minn. 499, 53 N. W. 766, 22 L. R. A. 80; *Clarke* v. *Marsiglia*, 1 Denio (N. Y.) 317, 43 Am. Dec. 670; *Danforth* v. *Walker*, 37 Vt. 239, 40 Vt. 257; *Moline Scale Co* v. *Beed*, 52 Iowa 307, 3 N. W. 96, 35 Am. Rep. 272; *Butler* v. *Butler*, 77 N. Y. 472, 33 Am. Rep. 648; *Hosmer* v. *Wilson*, 7 Mich. 294, 74 Am. Dec. 716; *Ault* v. *Dustin*, 100 Tenn. 366, 45 S. W. 981; and *Roehm* v. *Horst*, 178 U. S. 1, 20 Sup. Ct. Rep. 780, 44 L. ed. 953, were also cited as sustaining the conclusion.

SALE—PERFORMANCE BY SELLER—SECOND TENDER AFTER JUSTIFIABLE REJECTION.—Defendant ordered of plaintiff a cash register to be paid for partly in cash and partly in notes falling due at monthly intervals. Plaintiff delivered a machine to defendant and received the cash and notes. Three days afterwards defendant discovered that the machine delivered was not the kind agreed upon, and returned it to plaintiff with a letter stating the fact. Plaintiff replied saying that it was a mistake, and that the error would be corrected in a few days. Defendant replied saying that he would not now accept any machine, and asking to have the money returned and the notes cancelled. Plaintiff wrote in reply that no countermand of the order would be permitted, and afterward tendered a proper machine which defendant refused to receive. Plaintiff retained the cash payment and brought action upon the notes. On the trial, plaintiff contended that the first machine was delivered merely for temporary use, but defendant was not so advised and did not so understand it. *Held*, that plaintiff could not recover. *Hallwood Cash Register Co.* v. *Lufkin* (1901), 179 Mass. 143, 60 N. E. Rep. 473.

While there may be cases in which a seller who has by mistake delivered a wrong article may, within the time originally fixed, correct the mistake by a delivery of the proper article, [See *Borrowman* v. *Free*, 48 L. J. Q. B. (N. S.) 65; *Tetley* v. *Shand*, 25 L. T. (N. S.) 658, 20 W. R. 206], this was not such a case. A reasonable time for the delivery had expired when the first machine was delivered, and a buyer is under no obligation to permit the seller to make repeated attempts to perform his contract. MECHEM ON SALES, § 1403; *McCormick Harvester Co.* v. *Russell*, 86 Iowa 556, 53 N. W. Rep. 310.

SALE—TRANSFERS OF DRAFT WITH BILL OF LADING ATTACHED—RIGHTS OF BUYER AGAINST TRANSFEREE.—A bank cashed a draft with bill of lading attached, drawn by the consignor on the consignee. The latter paid the draft, but on inspection found the goods were not of the quality contracted for. In an action by the consignee against the bank, *Held*, that he could recover the money paid on the draft. *Searles* v. *Smith Grain Co.* (1902), — Miss. — , 32 S. Rep. 287.

This case follows *Miller* v. *Bank*, 76 Miss. 84; *Landa* v. *Lattin*, 19 Tex. Civ. App. 246, 46 S. W. Rep. 48; *Finch* v. *Gregg*, 126 N. C. 176, 49 L. R. A.